IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5936 of 1998
With
FIRST APPEAL No. 5937 of 1998

Date of Decision: 21-7-2005

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ANSUYABEN WD/O LALBHAI GIRDHARBHAI BHAVSAR & 1 - Appellant(s)
Versus
GUMANSING SONJIBHAI -: DELETED :- & 2 – Defendant(s)
(for full cause title, see next sheet)

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Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellant(s):
Mr.K.M.Patel, Adv.

For the Respondent-3:
Ms.Megha Jani, Adv.

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. These Appeals (First Appeal No.5936/98 – Ansuyaben and anr. v. Kanubhai Desaibhai Patel (Cinemawala) and anr. & First Appeal No.5937/98 – Vaishaliben d/o. Lalbhai Girdharbhai Bhavsar v. Kanubhai Desaibhai Patel (Cinemawala) & anr.) are directed against

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Whether reporters of Local Papers may be allowed to see the Judgment?

the Award of Motor Accident Claims Tribunal (A-III), Kheda, Nadiad, MACP Nos.248/89 and 249/89, dated 19.6.1998.

2. Shortly stated, accident took place on 1.12.1988 at about 3:30 p.m. on Sunav Crossing. Lalbhai Girdharbhai (deceased) was traveling on Luna No.GCE-5127 with Vaishaliben (pillion rider). When they were approaching the cross roads, truck No.GTK-4890 came from wrong side and dashed with the Luna. Lalbhai, driving the luna, expired on the spot while Vaishaliben sustained injuries. Deceased was 62 year old on the date of accident receiving Rs.1,100/- per month by way of pension and Rs.300/- per month from tuition. He was quite healthy, therefore, could survive upto the age of 82 years. Compensation of Rs.1,00,000/- is claimed in MACP No.248/89. Vaishaliben was studying in T.Y.B.Com. She was healthy. She was 20 year old at the time of accident. She sustained injuries on face, eyes and upper limbs, face is disfigured, suffers from inferiority complex, lost chance of marriage, feels unsafe after the accident, has mental problems because of injury. She was hospitalized for a pretty long time.

3. United India Insurance Company Limited denies the allegations. It states that the truck was not involved in the accident; there is contributory negligence on the part of the deceased.

4. The Claims Tribunal holds that the deceased contributed to the

accident to the extent of 30%. Compensation of Rs.37,500/- is awarded to the deceased, Rs.75,500/- to Vaishaliben. Aggrieved by this judgment, these Appeals are filed for enhancement of compensation.

5. Short question for consideration is whether just compensation has been awarded to the claimants in these Appeals. Income of the deceased has been taken Rs.1,500/-. Making deduction of 1/3rd towards personal expenses, Rs.12,000/- per annum is multiplied by five looking to the age of deceased. Accordingly, compensation of Rs.60,000/- is worked out plus Rs.15,000/- towards loss of estate and consortium, taking the total compensation to Rs.75,000/-. Making deduction of 30% for contributory negligence, compensation comes to Rs.52,500/-. After making deduction of Rs.15,000/- paid towards "No Fault Liability", amount of compensation worked out is Rs.37,500/- payable with interest at the rate of 9% p.a. From the date of application till realization.

In case of Vaishaliben, compensation has been worked out on Rs.2,000/- per month taking into consideration that she had married after the accident and was employed Librarian with monthly salary of Rs.6,700/- per month. Overall disability has been assessed at 17.4%, thereby, the amount comes to Rs.350/- per month, Rs.4,200/- per year,

multiplier of 15 applied. Ultimate compensation worked out is Rs.75,500/- payable with interest at the rate of 9% p.a. From the date of application till payment.

6. So far as assessment of compensation for the death of deceased is concerned, looking to 30% negligence on his part, taking income of Rs.1,500/- and use of multiplier of 5, ultimate compensation of Rs.,37,500/- after making deductions discussed above, is just and proper calling for no interference. First Appeal No.5936 of 1998 is therefore dismissed. Cost on parties.

With regard to compensation awarded to Vaishaliben, it can be said that instead of multiplier of 18, 15 is used. Although doctor has stated that permanent disability was 34.9%, MACT has reduced it to 17.5%. However, use of proper multiplier in this case is required. Therefore, First Appeal No.5937 of 1998 is allowed, Award is modified to the extent that compensation works out to Rs.88,100/- (Rs.4200x18 = Rs.75,600 + Rs.5,000 [medical expenses] + Rs.7,500 [pain, shock and suffering] = Rs.88,100). Thus, the compensation works out to Rs.88,100/-, enhanced by Rs.12,600/-. Enhanced compensation will carry interest at the rate of 9% p.a. from the date of application till payment. Cost of this Appeal shall be borne by the parties. United India Insurance Company Limited will deposit the balance mount

with the MACT concerned within two months, whereafter, it shall be paid to the claimant on proper verification.

(Bhawani Singh)
Chief Justice

(H.K.Rathod)
Judge

(sunil)